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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 CESAR ZAVALA-VASQUEZ and
10 CARMEN PEREZ, husband and wife,

11 Plaintiffs,

12 v.

13 ALLSTATE INDEMNITY COMPANY,

14 Defendant.

CASE NO. C08-5673BHS

ORDER DENYING
DEFENDANT'S MOTION FOR
RECONSIDERATION AND
REQUESTING RESPONSE

15 This matter comes before the Court on Defendant's Motion for Reconsideration
16 (Dkt. 65) and Plaintiffs' Motion for Reconsideration (Dkt. 67). The Court has considered
17 the pleadings filed in support of the motions and the remainder of the file and hereby
18 denies Defendant's motion and requests a response from Defendant to Plaintiffs' motion.

19 **I. PROCEDURAL HISTORY**

20 On September 29, 2008, Plaintiffs Cesar Zavala-Vasquez and Carmen Perez filed a
21 complaint against Defendant Allstate Indemnity Company in the Superior Court of
22 Washington for Pierce County. Dkt. 1 at 1. On November 7, 2008, Defendant removed
23 the action to this Court. *Id.*

24 In their complaint, Plaintiffs allege that Defendant breached an insurance contract,
25 acted in bad faith, violated both the Washington Consumer Protection Act ("CPA") and
26 the Washington Insurance Fair Conduct Act ("IFCA"), and inflicted emotional distress.
27 *Id.* at 8-11.
28

1 On August 25, 2009, Defendant filed a Motion for Partial Summary Judgment Re:
2 Plaintiffs' Extra Contractual Claims. Dkt. 46.

3 On October 15, 2009, the Court granted in part and denied in part Defendant's
4 motion. Dkt. 64. The Court denied Defendant's motion on Plaintiffs' bad faith claim and
5 Washington Insurance Fair Conduct Act ("IFCA") claim because

6 Plaintiffs have established that there exist questions of fact regarding
7 whether it was reasonable for Defendant to deny the claim based on the
8 allegation that Defendant's investigation revealed an intentional act by
9 Plaintiffs.

10 *Id.* at 6.

11 The Court granted Defendant's motion as to Plaintiffs' claim under the
12 Washington Consumer Protection Act ("CPA") because Plaintiffs had failed to submit
13 admissible evidence of an injury to their business or property. *Id.* at 7-8.

14 On October 26, 2009, Defendant filed a Motion for Reconsideration of the Court's
15 order. Dkt. 65. On October 27, 2009, Plaintiff also filed a Motion for Reconsideration.
16 Dkt. 67.

17 **II. FACTUAL BACKGROUND**

18 Plaintiffs claim that on September 29, 2007, there was a fire at their home. Dkt. 1
19 at 7-11 ("Complaint"), ¶ 2.1. Plaintiffs also claim that their house was covered by an
20 insurance contract with Defendant and that they submitted a claim for coverage to
21 Defendant. *Id.* ¶¶ 2.2-2.3.

22 On February 25, 2008, Defendant conducted an examination under oath of
23 Virginia Alameda, Plaintiff Perez's daughter. Dkt. 47, Declaration of Rory Leid ("Leid
24 Decl."), Exh. E. On March 7, 2008, Defendant conducted an examination under oath of
25 both Plaintiffs. *Id.*, Exhs. A and F.

26 On April 11, 2008, Defendant denied Plaintiffs' claim for coverage. Dkt. 1 at 8.
27 Defendant claims that it "denied the Plaintiff's insurance claim for the fire loss in part
28 because it appeared that the Plaintiffs caused the loss." Dkt. 32 at 2.

1 On June 17, 2009, Defendant conducted depositions of both Plaintiffs. Leid Decl.,
2 Exhs. C and E. For the purposes of the instant motion, it is important to note that
3 Plaintiffs' depositions occurred over one year after Plaintiffs' examinations under oath.

4 III. DISCUSSION

5 As a threshold matter, Defendant asserts that a motion for reconsideration is
6 governed by Fed. R. Civ. P. 59 and 60. Dkt. 65 at 6-7. Defendant is wrong. Motions for
7 reconsideration are governed by Local Rule CR 7(h), which provides as follows:

8 Motions for reconsideration are disfavored. The court will ordinarily deny
9 such motions in the absence of a showing of manifest error in the prior
ruling or a showing of new facts or legal authority which could not have
been brought to its attention earlier with reasonable diligence.

10 Local Rule CR 7(h)(1). The Court may not grant a motion for reconsideration unless a
11 response has been requested. *Id.* 7(h)(3).

12 In this case, Defendant requests that the Court reconsider its denial of Defendant's
13 motion for summary judgment on Plaintiffs' bad faith claim and IFCA claim. Dkt. 65.
14 The Court denies this request because there are questions of fact regarding the
15 reasonableness of Defendant's denial of Plaintiffs' insurance claim. Those questions
16 must be submitted to the factfinder. Therefore, the Court denies Defendant's motion.

17 With regard to Plaintiffs' motion, they request that the Court reconsider its
18 dismissal of their CPA claim. Dkt. 67. Plaintiffs argue that the Court may have
19 overlooked evidence of injury to their property. *Id.* at 2-3. They claim that the evidence
20 was contained in the Declaration of Virginia Alameda (Dkt. 53). Dkt. 67 at 2-3.
21 Plaintiffs also argue that they have obtained new facts that could not have been brought to
22 the Court's attention earlier with reasonable diligence. *Id.* at 3 (citing Dkt. 68,
23 Declaration of Carmen Perez). These facts may create a question of fact regarding the
24 element of injury under Plaintiffs' CPA claim. Therefore, the Court requests a response
25 from Defendant on whether the Court should grant Plaintiffs' motion for reconsideration
26 on these factual issues.

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IV. ORDER

Therefore, it is hereby

ORDERED that Defendant's Motion for Reconsideration (Dkt. 65) is **DENIED**.

The Court requests a response from Defendant to Plaintiffs' Motion for Reconsideration (Dkt. 65). Defendant may file a response not to exceed eight (8) pages no later than November 8, 2009.

DATED this 29th day of October, 2009.


BENJAMIN H. SETTLE
United States District Judge